
SENATE BILL 5091

State of Washington 65th Legislature 2017 Regular Session
By Senators Takko and Rivers; by request of Utilities &
Transportation Commission

1 AN ACT Relating to removing expiration dates, obsolete dates, and
2 an outdated statutory reference from the enforcement provisions of
3 the underground utility damage prevention act; and amending RCW
4 19.122.130, 19.122.140, and 19.122.150.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 19.122.130 and 2012 c 96 s 1 are each amended to
7 read as follows:

8 (1) (~~By January 1, 2013,~~) The commission must contract with a
9 statewide, nonprofit entity whose purpose is to reduce damages to
10 underground and above ground facilities, promote safe excavation
11 practices, and review complaints of alleged violations of this
12 chapter. The contract must not obligate funding by the commission for
13 activities performed by the nonprofit entity or the safety committee
14 under this section(~~, and is therefore exempt under RCW 39.29.040(1)~~
15 ~~from the requirements of chapter 39.29 RCW~~)).

16 (2) (~~By January 1, 2013,~~) The contracting entity must create a
17 safety committee to:

18 (a) Advise the commission and other state agencies, the
19 legislature, and local governments on best practices and training to
20 prevent damage to underground utilities, and policies to enhance
21 worker and public safety; and

1 (b) Review complaints alleging violations of this chapter
2 involving practices related to underground facilities.

3 (3)(a) The safety committee will consist of thirteen members, who
4 must be nominated by represented groups and appointed by the
5 contracting entity to staggered three-year terms. (~~By January 1,~~
6 ~~2013,~~) The safety committee must include representatives of:

7 (i) Local governments;

8 (ii) A natural gas utility subject to regulation under Titles 80
9 and 81 RCW;

10 (iii) Contractors;

11 (iv) Excavators;

12 (v) An electric utility subject to regulation under Title 80 RCW;

13 (vi) A consumer-owned utility, as defined in RCW 19.27A.140;

14 (vii) A pipeline company;

15 (viii) The insurance industry;

16 (ix) The commission; and

17 (x) A telecommunications company.

18 (b) (~~By January 1, 2013,~~) The safety committee may pass bylaws
19 and provide for those organizational processes that are necessary to
20 complete the safety committee's tasks.

21 (4) The safety committee must meet at least once every three
22 months.

23 (5) (~~After January 1, 2013,~~) The safety committee may review
24 complaints of alleged violations of this chapter involving practices
25 related to underground facilities. Any person may bring a complaint
26 to the safety committee regarding an alleged violation occurring on
27 or after January 1, 2013.

28 (6) To review complaints of alleged violations, the safety
29 committee must appoint at least three and not more than five members
30 as a review committee. The review committee must include the same
31 number of members representing excavators and facility operators. One
32 member representing facility operators must also be a representative
33 of a pipeline company or a natural gas utility subject to regulation
34 under Titles 80 and 81 RCW. The review committee must also include a
35 member representing the insurance industry.

36 (7) Before reviewing a complaint alleging a violation of this
37 chapter, the review committee must notify the person making the
38 complaint and the alleged violator of its review and of the
39 opportunity to participate.

1 (8) (~~After January 1, 2013,~~) The safety committee may provide
2 written notification to the commission, with supporting
3 documentation, that a person has likely committed a violation of this
4 chapter, and recommend remedial action that may include a penalty
5 amount, training, or education to improve public safety, or some
6 combination thereof.

7 (~~(9) This section expires December 31, 2020.~~)

8 **Sec. 2.** RCW 19.122.140 and 2011 c 263 s 19 are each amended to
9 read as follows:

10 (1) The commission may enforce the civil penalties authorized in
11 RCW 19.122.070 or 19.122.075 when it receives written notification
12 from the safety committee created under RCW 19.122.130 indicating
13 that a violation of this chapter has likely been committed by a
14 person subject to regulation by the commission, or involving the
15 underground facilities of such a person.

16 (2) If the commission receives written notification from the
17 safety committee pursuant to RCW 19.122.130 that a violation of this
18 chapter has likely been committed by a person who is not subject to
19 regulation by the commission, and in which the underground facility
20 involved is also not subject to regulation by the commission, the
21 commission may refer the matter to the attorney general for
22 enforcement of a civil penalty under RCW 19.122.070 or 19.122.075.
23 The commission must provide funding for such enforcement. However,
24 any costs and fees recovered by the attorney general pursuant to
25 subsection (3) of this section must be deposited by the commission in
26 the fund that paid for such enforcement.

27 (3) In a matter referred to it by the commission pursuant to
28 subsection (2) of this section, the attorney general may bring an
29 action to enforce the penalties authorized in RCW 19.122.070 or
30 19.122.075. In such an action, the court may award the state all
31 costs of investigation and trial, including a reasonable attorneys'
32 fee fixed by the court.

33 (~~(4) This section expires December 31, 2020.~~)

34 **Sec. 3.** RCW 19.122.150 and 2011 c 263 s 21 are each amended to
35 read as follows:

36 (1) The commission may investigate and enforce violations of RCW
37 19.122.055, 19.122.075, and 19.122.090 relating to pipeline

1 facilities without initial referral to the safety committee created
2 under RCW 19.122.130.

3 (2) If the commission's investigation of notifications received
4 pursuant to RCW 19.122.140 or subsection (1) of this section
5 substantiates violations of this chapter, the commission may impose
6 penalties authorized by RCW 19.122.055, 19.122.070, 19.122.075, and
7 19.122.090, and require training, education, or any combination
8 thereof.

9 (3) With respect to referrals from the safety committee, the
10 commission must consider any recommendation by the committee
11 regarding enforcement and remedial actions involving an alleged
12 violator.

13 (4) In an action to impose a penalty initiated by the commission
14 under subsection (1) or (2) of this section, the penalty is due and
15 payable when the person incurring the penalty receives a notice of
16 penalty in writing from the commission describing the violation and
17 advising the person that the penalty is due. The person incurring the
18 penalty has fifteen days from the date the person receives the notice
19 of penalty to file with the commission a request for mitigation or a
20 request for a hearing. The commission must include this time limit
21 information in the notice of penalty. After receiving a timely
22 request for mitigation or hearing, the commission must suspend
23 collection of the penalty until it issues a final order concerning
24 the penalty or mitigation of that penalty. A person aggrieved by the
25 commission's final order may seek judicial review, subject to
26 provisions of the administrative procedure act, chapter 34.05 RCW.

27 (5) If a penalty imposed by the commission is not paid, the
28 attorney general may, on the commission's behalf, file a civil action
29 in superior court to collect the penalty.

30 (~~(6) This section expires December 31, 2020.~~)

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